

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTINA DORSEY,

Plaintiff,

v.

CITY OF SAN DIEGO, et al.,

Defendant.

Case No.: 15-CV-1441-L-WVG

**ORDER GRANTING JOINT  
MOTION TO CONTINUE MOTION  
CUT-OFF DATE FOR MOTION FOR  
SUMMARY JUDGMENT**

**[ECF NO. 66]**

**BACKGROUND**

On August 24, 2016, plaintiff Christina Dorsey (“Plaintiff”) and defendants City of San Diego, San Diego Police Department, Chief Shelley Zimmerman, Sergeant Cephas, Officer Ponce, Officer Esquer, Officer Hendee, Officer Anderson, and Officer St. Clair (collectively “Defendants”) filed a Joint Motion to Continue Expert Deposition Date for Jack Smith. ECF No. 63. On August 25, 2016, the Court denied the motion without prejudice. ECF No. 64. At 5:20 P.M. on August 25, 2016, the Court convened a telephonic status conference where the parties renewed their motion to extend fact discovery. The Court granted the motion upon a finding of good cause. ECF No. 65. On August 31, 2016 at 1:20 P.M., the parties filed a Joint Motion To Continue Motion Cut-Off Date For Motion For Summary Judgment To Accommodate Settlement Discussions

1 (“Joint Motion”), requesting the Court to continue the motion cut-off date set for  
 2 September 2, 2016 to October 7, 2016. ECF No. 66.

### 3 RULING

4 Based on the good cause shown, the Court hereby GRANTS the Joint Motion and  
 5 continues the motion cut-off date for summary judgment to **September 23, 2016**.

6 Pursuant to FRCP 16(b)(3), a district court is required to enter a pretrial scheduling  
 7 order that “must limit the time to join other parties, amend the pleadings, complete  
 8 discovery, and file motions.” Fed. R. Civ. P. 16(b)(3)(A). The scheduling order “controls  
 9 the course of the action unless the court modifies it [ ]” and FRCP “16 is to be taken  
 10 seriously.” Fed. R. Civ. P. 16(d); *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir.  
 11 1994). Indeed, parties must “diligently attempt to adhere to [the Court’s] schedule  
 12 throughout the subsequent course of the litigation.” *Jackson v. Laureate, Inc.*, 186 F.R.D.  
 13 605, 607 (E.D. Cal. 1999). “A scheduling order ‘is not a frivolous piece of paper, idly  
 14 entered, which can be cavalierly disregarded without peril.’” *Johnson v. Mammoth*  
 15 *Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (quoting *Gestetner Corp. v. Case*  
 16 *Equip. Co.*, 108 F.R.D. 138, 141 (D. Me. 1985)).

17 FRCP 16(b)(4) “provides that a district court’s scheduling order may be modified  
 18 upon a showing of ‘good cause,’ an inquiry which focuses on the reasonable diligence of  
 19 the moving party.” *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1174 n. 6 (9th Cir. 2007); citing  
 20 *Johnson*, 975 F.2d at 609. In *Johnson*, the Ninth Circuit Court of Appeal explained,

21 ...Rule 16(b)’s “good cause” standard primarily concerns the diligence of  
 22 the party seeking the amendment. The district court may modify the pretrial  
 23 schedule “if it cannot reasonably be met despite the diligence of the party  
 24 seeking the extension.” Fed. R. Civ. P. 16 advisory committee’s notes (1983  
 25 amendment)...[T]he focus of the inquiry is upon the moving party’s reasons  
 26 for seeking modification...If that party was not diligent, the inquiry should  
 27 end.

28 *Johnson*, 975 F.2d at 609.

1 In part, the “good cause” standard requires the parties to demonstrate that  
2 “noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding her  
3 diligent efforts to comply, because of the development of matters which could not have  
4 been reasonably foreseen or anticipated at the time of the Rule 16 Scheduling  
5 conference...” *Jackson*, 186 F.R.D. at 608.

6 In the August 24, 2016 Joint Motion to Continue Expert Deposition Date for Jack  
7 Smith, the parties made no mention to the Court of a potential settlement offer. *See* ECF  
8 No. 63. Further, the parties did not request an extension of the motion cut-off date. *See id.*  
9 On the August 25, 2016 telephonic status conference, again, the parties made no mention  
10 to the Court of any potential settlement offer nor did the parties request an extension of the  
11 motion cut-off date. The parties were aware this date was looming as it has remained  
12 unchanged since the Court set the Scheduling Order on December 14, 2015. *See* ECF No.  
13 23 at 3. Defendants were made aware of Plaintiff’s settlement offer on August 26, 2016  
14 yet the parties chose to wait until two days before the cut-off deadline to file a request to  
15 extend the deadline. *See* ECF No. 66 at 1. Based on the foregoing facts, the Court would  
16 be justified in denying the request with prejudice.

17 However, the Court finds there is good cause to continue the deadline solely because  
18 the parties have represented to the Court they “believe there is a genuine prospect that the  
19 parties can reach an informal settlement of the matter based upon Plaintiff’s latest  
20 demand.” *Id.* at 2. The parties have represented to the Court that Defendants will brief the  
21 San Diego City Council on September 20, 2016. *Id.* at 2. Given this, the Court finds that  
22 good cause does not exist to extend the motion cut-off date to October 7, 2016. Should the  
23 City Council approve the settlement offer, it is likely no motion for summary judgment  
24 will be required. Should the City Council reject the settlement offer, the Court is confident  
25 the parties will be able to complete any motions by the continued deadline.

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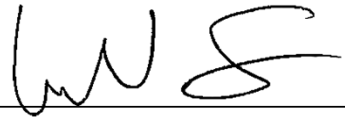
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1 Finding good cause, the Court grants the Joint Motion. The motion cut-off date for  
2 summary judgment only is hereby continued to **September 23, 2016**. No further requests  
3 for extension will be entertained by the Court. All other dates are unchanged.

4 **IT IS SO ORDERED.**

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6 Dated: September 1, 2016

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8 Hon. William V. Gallo  
9 United States Magistrate Judge  
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